

Federal Communications Commission

DA 06-14

Before the
Federal Communications Commission
Washington, D.C. 20554

2006 JAN -9 P 5:02

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Pearsall and Dilley, Texas)

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)
) MB Docket No. 03-87
) RM-10686
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)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 4, 2006**Released: January 6, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration the *Notice of Proposed Rule Making*¹ issued in response to a Petition for Rule Making filed by Pearsall Radio Works, Ltd. ("Petitioner"), licensee of Station KVWG-FM, Channel 237A, Pearsall, Texas, proposing the reallocation of Channel 237A from Pearsall to Dilley, Texas, and the modification of Station KVWG-FM's license accordingly. Petitioner also proposed the allotment of Channel 227A at Pearsall, Texas, as a replacement service. In response to the *Notice*, comments, a counterproposal, and supplemental comments were filed by F. W. Hannel, d.b.a. Batesville Broadcasting Company ("BBC"), proposing the allotment of Channel 228C3 at Batesville, Texas, as the community's first local aural transmission service. To accommodate the allotment, BBC also proposed (a) the substitution of Channel 291A for vacant Channel 229A at Dilley, Texas, with modified reference coordinates; and (b) the modification of the reference coordinates for vacant Channel 289A at Cotulla, Texas.² Petitioner filed comments in support of the proposal reaffirming its intention to apply for the respective channels, if allotted. Petitioner also filed reply comments.

2. Petitioner filed its reallocation proposal pursuant to Section 1.420(i) of the Commission's Rules,³ which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ In

¹ *Pearsall and Dilley, Texas*, 18 FCC Rcd 6214 (MB 2003).

² The counterproposal is technically defective and will be dismissed. Counterproposals must be technically correct and substantially complete at the time they are filed. *E.g., Broken Arrow and Bixby, Oklahoma, Coffeyville, Kansas*, 3 FCC Rcd 6507 (1988); *Carlisle, Irvine and Morehead, Kentucky*, 12 FCC Rcd 13181 (MMB 1997); *Cloverdale, Montgomery and Warrior Alabama*, 12 FCC Rcd 2090 (MMB 1997). Specifically, the petition proposing the allotment of Channel 228C3 at Batesville, Texas, at the time filed, was short-spaced to the vacant allotment site, and now application site, for Channel 228A at Carrizo Springs, Texas. The required spacing between Channel 228C3 at Batesville and Channel 228A at Carrizo Springs is 142 kilometers, whereas the actual distance is 52.4 kilometers.

³ 47 C.F.R. § 1.420(i).

⁴ *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

support of the reallocation, petitioner states that the reallocation of Channel 237A from Pearsall to Dilley would allow for full utilization of that channel, which is now a substandard, short-spaced facility. Additionally, the allotment of Channel 227A as a replacement service at Pearsall would be fully-spaced and accommodate a six-kilowatt Class A facility.

3. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁵ Specifically, the reallocation of Channel 237A at Dilley (population 3,674) would provide the community with its third local aural transmission service, triggering priority (4). By way of comparison, the retention of Channel 237A at Pearsall (population 7,157) would provide the community with its fifth local aural transmission service, also triggering priority (4), other public interest matters. However, Pearsall would not be losing an FM service because Channel 227A will be allotted herein as a replacement service.

4. Moreover, an engineering analysis has revealed that the reallocation would result in a gain of service to 4,729 persons encompassing an area of 1,359 square kilometers. Within the gain area, 4,017 persons encompassing an area of 218 square kilometers would receive four aural services, and the remainder of the gain area would receive five or more aural services. The reallocation would also create a loss of service to 2,582 persons encompassing an area of 1,362 square kilometers, resulting in a net gain of new service to 2,147 persons. Within the loss area, 19 persons encompassing an area of 317 square kilometers would receive four aural services. The remainder of the loss area would receive five or more aural services.

5. We believe the public interest would be served by reallocating Channel 237A to Dilley, Texas, as the community's third local FM transmission service, without depriving Pearsall of its sole local service.⁶ An engineering analysis has determined that Channel 237A can be allotted to Dilley in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) east at Petitioner's requested site. The reference coordinates for Channel 237A at Dilley are 28-39-55 North Latitude and 99-08-35 West Longitude. Additionally, Channel 227A can be allotted to Pearsall with a site restriction of 1.7 kilometers (1.1 miles) west at Petitioner's requested site. The reference coordinates for Channel 227A at Pearsall are 28-53-13 North Latitude and 99-06-40 West Longitude. Because Pearsall and Dilley are located within 320 kilometers (199 miles) of the Mexican border, the Commission sought Mexican concurrence for the allotment of Channel 237A at Dilley and Channel 227A at Pearsall, Texas. Mexican concurrence has been received for Channel 227A at Pearsall. However, concurrence of the Mexican government has not yet been received for Channel 237A at Dilley. If a construction permit for Channel 237A at Dilley, Texas, is granted prior to the Commission's receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: "Use of this allotment is subject to suspension,

⁵ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁶ Stations KMFR(FM) and KSWG(AM) would remain licensed to Pearsall. Vacant Channel 277A is also allotted to the community and Channel 227A is allotted herein.

modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Comunicaciones Y Transportes." In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station KVWG-FM to specify operation on Channel 237A at Dilley, Texas, as its new community of license.

6. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective February 21, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Pearsall, Texas	227A, 277A, 281C1
Dilley, Texas	229A, 237A, 255C1 ⁷

7. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Pearsall Radio Works, Ltd., Station KVWG-FM, Pearsall, Texas, IS MODIFIED to specify operation on Channel 237A at Dilley, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

8. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), Pearsall Radio Works, Ltd., licensee of Station KVWG-FM, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license to Dilley, Texas, at the time its Form 301 application is submitted.

⁷Channel 255C2 at Dilley was upgraded by one-step application (File No. BPH-20010102AA) to Channel 255C1 on April 17, 2002. Accordingly, the FM Table of Allotments should be amended to reflect Channel 255C1 in lieu of Channel 255C2 at Dilley, Texas. This action constitutes an editorial change in the FM Table of Allotments. Therefore, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. § 553(b)(A) and (B).

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

Pearsall Radio Works, Ltd.
8023 Vantage Street, Suite 840
San Antonio, Texas 78230

10. IT IS FURTHER ORDERED, That the counterproposal filed by F. W. Hannel, d.b.a. Batesville Broadcasting Company, proposing the allotment of Channel 228C3 at Batesville, Texas, IS DISMISSED.

11. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. § 801(a)(1)(A).

12. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

13. For further information concerning the above, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau